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THE LEGAL FRAMEWORK FOR EMPLOYMENT RELATIONS: THE *TORTUOUS* EVOLUTION OF LABOR AND SOCIAL LAWS IN THE PRACTICE OF INDUSTRIAL RELATIONS IN NIGERIA

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ABSTRACT

This paper represents an attempt at analyzing the legal framework within which employment Relations is practiced in Nigeria, focusing on the tortuous evolution of the labor and social laws for the practice of Industrial Relations. The paper adopted a descriptive and historical method in analyzing the legal framework for the practice of employment Relations in Nigeria. The paper noted that the evolution of this legal framework is seen to be tortuous because its emergence led to the following traumatic events in the practice of Industrial Relations in Nigeria: Proliferation of pocket-sized unions; the characterization of Trade Unions and central labor organization with divisiveness and instability; the tortuous labor codes assigned little or no role to workers on labor matter; the Labor codes of the era gave employers the effrontery to decide not to recognize or relate with Trade Unions. The paper concluded that a change in Industrial Relations practice in Nigeria is partly a function of the impact of the legal framework (labor laws) that emerged in a particular historical period of the country.

KEYWORDS: ***Tortuous Evolution, Voluntarism, Interventionism, Promulgation, Recommendation, Ratification, Convention, Legal Framework, Statutes & Legislation***

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Original Article

1. INTRODUCTION

The body of knowledge known as Employment Relations today evolved as a reaction to the labor problems in the industrializing countries in the period spanning 1870 – 1920 (Kaufman, 2004a). As the words of Kaufman, (2010), contend, these Labour problems at that time portrayed a commodity model of labor and an intellectual rationale for a Laissez-faire and unregulated definition of free trade in labor, unilateral and harsh labor management practices. These Labour problems were said to have led to a need to seek for a paradigm shift or an alternative which culminated into the evolution of the discipline known today as Employment Relations (Ely, 1886) and (Adams, 1887), with the emphasis on the justification for the emergence of labor organizations, social and Labour legislations to balance the one-sided price determination and conditions of labor, and the relation of the state to workplace governance.

Figure 1 is a representation of the historical evolution of Industrial Relations as a paradigm shift to the position of the orthodox, classical and neo-classical economic theory of the perfect and free market:

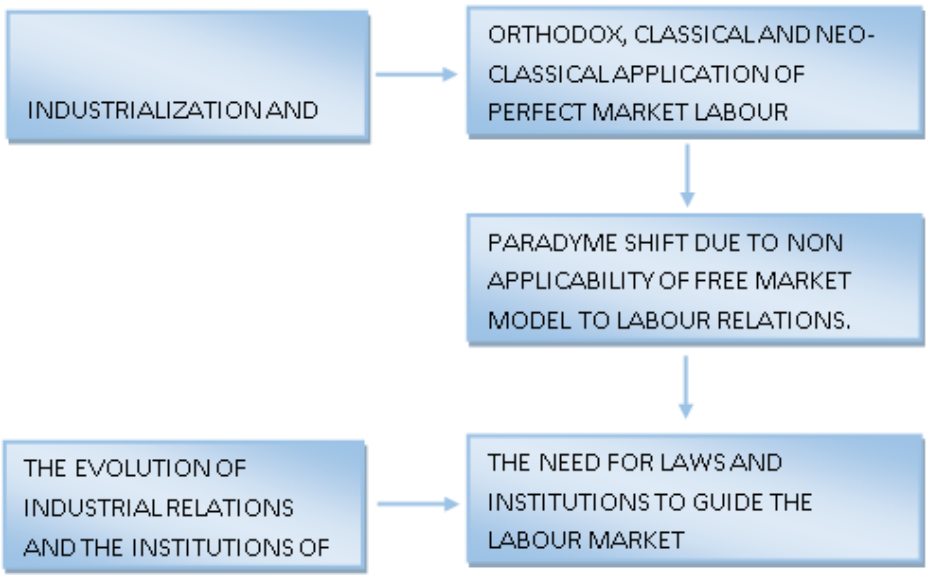

Figure 1: The Historical Origin of Employment Relations

Source: Desktop Analysis, 2016

The purpose of this paper aligns with the works of Commons (1934b) who recorded that, the Industrial Relations model is superior to the orthodox demand and supply model of the labor market, emphasizing the need for laws and institutions to guide the labor market in what he referred to as "A managed equilibrium". This paper will therefore explore the tortuous evolution of the legal framework (legal and social laws) for the practice of Employment Relations in Nigeria.

2. THE TORTUOUS EVOLUTION OF LABOR AND SOCIAL LAWS IN NIGERIA

Prior to the emergence of Trade Unions and Managements, as we have them today in Nigeria, there was the absence of wage labor in the sense of workers depending on wages as the primary, if not exclusive means of sustenance. There was also the absence of trade disputes, strikes and the gamut of laws governing labor-management relations.

To be able to explain the emergence of Unions, Managements and the consequent emergence of a legal framework, it would be necessary to trace the development of wage labor in Nigeria. In order to do this, we shall divide our discussion into 3 broad periods:

2.1 Pre-Colonial Period

The dominant production system was the village community which had no class in the capitalist sense of the word. The period represented a stage in the development of human production when man changed from a hunter and gatherer of wild animals and fruits to settled agriculture. In addition to agriculture, people were also engaged in herding and craft work. Land was the fundamental means of production and was communally owned and therefore had no exchange value.

Labor was primarily supplied by the household and its special feature was that it was quite capable of adapting its size and skills to meet changing circumstances which were not complex. Of this, great significance was that work was not performed with the aim of receiving any form of remuneration. Instead, it was co-operative.

There was therefore no necessity for a formal legal framework for Industrial Relations practice at that time.

2.2 The Colonial Period

During this period, Africans and indeed Nigerians entered the age of mercantile trade at the establishment of contact with Europe and with the opening of the Americas and West Indies. The commercial activity at that time was largely based on slave trade where cheap European goods were exchanged for African slaves. This system of business destroyed the pre-colonial form of trade. When slave trade was later abolished in Europe, it became a restriction on further development of the capitalist mode of production. Slave labourers, instead of being exported were used in the cultivation of primary export crops which led to the emergence of large plantations. The use of slave labor was deliberate at the time. Hopkins (1966) for instance pointed out that "the use of slave labor rather than wage labor was a matter of deliberate choice on the part of African employers".

With additional slave labor, more cash crops were produced and transported to the Coasts for export. This increased commercial activity leading to the arrival of more and more European firms and the setting up of shops. This led to the emergence of a class of big traders, (European trading firms etc.) and big cash crop farmers constituting the first set of employers. It also led to the emergence of a class of workers (wage earners) consisting of people employed by the various European trading firms, interpreters, gardeners and those employed when John-Beecroft set up the first consulate. Ananaba (1969) recorded that John-Beecroft's consul in 1859 formed the nucleus of public servants in Nigeria.

The point we are making here is that prior to our contact with Europe, there were no unions and Managements in the modern sense of the word and therefore no formal mechanisms in the determination of their functional relationship. With the monetization of the Nigerian economy by the first set of employers, wage labor, workers collectivities (unions) and their managements evolved. And as we may argue, these are features of European societies especially at the advent of the industrial revolution. Being features of European societies imported into the Nigerian pre-industrial society (modern trade unions and managements), and as would be expected, European type of remedies had to be applied to problems associated with the type of relationship that evolved (union/management relationship). This led to the tortuous evolution of a legal framework for the purpose of regulating the practice of Industrial Relations in Nigeria.

The colonial period witnessed the promulgation of the Trade Union ordinance of 1938 which brought about the legalization of Trade Unions for the first time in the practice of industrial relations in Nigeria. It should however be noted that prior to the 1938 ordinance, there existed the employment of Women Ordinance of 1912 which regulated the employment of women in line with their counterparts in England. There also existed the Master-Servant Ordinance of 1917 which provided for the formation and interpretation of contracts of employment generally.

The Principal labor laws that had impact on the practice of industrial relations in the early days in Nigeria are the 1938 Trade Union Ordinance; the Trade disputes Ordinance of 1941; and the Labor Code Ordinance of 1945.

The tortuous evolution of these labor laws led to the proliferation of pocket-sized unions; the characterization of Trade Unions and central labor organizations with divisiveness and instability. There was a total transformation of the Nigerian pre-colonial environment where wage labor was absent to a colonial environment with increasing economy monetarization and a consequent labor commoditization.

The tortuous and permissive nature of the legal framework of this era, made labor laws to become environmentally unfriendly. The 1938 Trade Union ordinance for instance allowed five workers in an organization to form

a Trade Union while the 1941 Trade disputes ordinance and 1945 labor code assigned little or no role to workers on labor matters. And cashing on this Industrial Relations situation, employers had the effrontery to decide not to recognize or relate with Trade Unions.

2.3 The Post Colonial Period

As Industrial Relations practice in Nigeria changed from the colonial era to the post-colonial era, the state purportedly introduced a new labor policy known as the voluntary ethic. That is, allowing the main parties in industrial relations to negotiate and settle their differences without the intervention of a third party.

There was however a major shift from the voluntary ethic to an interventionist ethic. This shift was caused by a supervening event on the environment (the Nigerian Civil War of 1968-1970). Unrests occasioned by the economic hardships experienced during the Nigerian Civil War led to the promulgation of the Trade disputes (emergency provisions) Decree of 1968 and that of 1969 which banned strikes and lockouts.

The post-civil war environment in Nigeria has however witnessed a legal framework which led to Government interventions through the promulgation of the principal labor statutes - Labor Decree 1974, and its amendments; Trade Unions Decree 1973 and its amendments; the Trade Disputes Decree 1976 and its amendments; incomes policy guidelines and indeed other stream of legislations that have bearing on labor-management relations.

The rationale for the interventionist ethic is said to be the need to forestall any action that would constitute a threat to the economy of Nigeria.

The Industrial Relations practice at this era was characterized by inability on the part of Trade Unions to form an umbrella organization. There was leadership rivalry between union leaders; differences in union leadership opinion over affiliation to political parties and ideological differences and leanings.

The interventionist ethic in this era led to the eventual re-structuring of Trade Unions along industry lines. That is, the predominant end product or economic activity of a company determines the union that worker would belong to. And there was eventually the evolution of one central labor organization (Nigerian Labor Congress).

The re-introduction of leadership rivalry in the Nigerian Labour Congress in 1988 further led to another serious intervention in the Industrial Relations climate. The National Economic Emergency Decree 22 of 1985 as amended in Decree 35 of 1986 which empowered the president to regulate the economy and labor matters led to the dissolution of the two factions of the Nigerian Labor Congress in 1988.

The trend in the Nigerian Industrial Relations practice further witnessed increasing interest of union officials in politics.

After the botched June 12, 1993 elections in Nigeria, Trade Union officials openly indicated their political leanings. This led to another devastating intervention on the part of Government. The political unrests occasioned by this politically motivated leaning on the part of trade unions led to the proscription of the officials of some of the foremost industrial unions in Nigeria - (NUPENG/PENGASSAN) and the Nigerian Labor Congress. There was also the promulgation of Decrees 4 and 26 which tended to impinge on the democratization of trade unions in Nigeria.

3. THE EMERGENT LEGAL FRAMEWORK

As we have argued in previous pages, the diffusion of the industrial revolution into the Nigerian pre-colonial economy led to its monetization with a consequent evolution of European type of Industrial Relations problems. This led to the introduction of European-like remedies or the Pax Colonica (British system of workplace governance). The European-like remedy is what we have referred to as the tortuous evolution of a legal framework for the regulation of Industrial Relations practice. The evolution of this legal framework is seen to be tortuous because its emergence led to the following traumatic events in the practice of Industrial Relations in Nigeria:

- Proliferation of pocket-sized unions
- The characterization of Trade Unions and central labor organization with divisiveness and instability
- The tortuous labor codes assigned little or no role to workers on labor matters.
- The Labor codes of the era gave employers the effrontery to decide not to recognize or relate with Trade Unions.

The legal framework that emerged is the Nigerian Labor Laws that are sourced as follows:

3.1 Received English Law

Received English Law could be divided into:

English Common Law: These are decisions made over the years by English Common Courts whose applications is based on the doctrine of precedents, that is, high court decisions over riding lower court decisions. Its application in Nigeria is by virtue of section 45 of laws (miscellaneous provisions Acts) made not to be bound absolutely by it, due to certain structural differences. This law is accepted in Nigeria in the sense that it is of persuasive authority.

The Doctrine of Equity: This, like the Common Law is a case law system. It differs from Common Law in that in the past, the King or Queen of England who was the fountain of Justice appoints Judges whose judgement may be unsatisfactory, and appeals may be made to the Lord Chancellor who makes an award which counters a mere compensation awarded through Common Law in the form of an injunction or order, which will give equal remedy, hence the concept of equity remedy or specific performance. It was through this way that the doctrine of equity developed. The original purpose of the Lord Chancellor in exercising his equitable jurisdiction was to mitigate an excessive rigidity that had set-in in the Common Law. The doctrine of equity is differentiated from Common Law originally because, it was developed by the Lord Chancellor in the court of Chancery but with the reorganization of the English Judicial System, the Common Law and equity have been administered together in the same courts. It is no longer possible in Nigeria and United Kingdom to distinguish between the two systems on the ground that they are applied in different courts. Other distinguishing characteristic is that whereas Common Law rules upon the same subject, Equity actually needs the Common Law rule before its own principles can take effect. The equity principle applies by virtue of Section 45 of laws (miscellaneous provisions) Acts.

Statutes of General Application: Only statutes of the United Kingdom Parliament passed before 1st January 1900 that are held by Nigerian courts to be of general application in England, apply in Nigeria. No English Labor Statute of any significance is applicable in Nigeria. Uvieghara (1976) points out that, evidence of the applications of statutes of general application in Nigeria are in the case between Labinjo and Ibeke, and the SALE OF GOODS ACT of 1893. Though as

local laws are made to apply in Nigeria, this body of laws will get smaller and smaller in application.

3.2 The Constitution of the Federal Republic of Nigeria

Constitutional provisions relevant to labor in Nigeria relate to the following sections of the 1999 Constitution:

Section 34(1) (c) provides that no person shall be required to perform forced or compulsory labor. This does not however prevent the Labor Minister from making regulations regulating the requisition of labor required in the event of any emergency or calamity threatening the life or well-being of the community, and labor.

Section 40 of the constitutional provision also include, inter alia, right of every person to form or belong to any trade union or any other association for the protection of his interests. Any person whose right to belong to a union of his choice is encroached upon may seek redress in court. It would be noted however that section 45 of the same constitution provides further that the government may by law derogate from the freedom to join or form a union of one's choice provided, however that such a law is reasonably justifiable in a democratic society (in the interest of defense, public safety, public order, public morality, public health or for the purpose of protecting the rights and freedom of other persons).

Conclusively therefore, it can be argued that Decree No. 22 of 1978 (now an Act of the National Assembly) is a law made by government in consonance with section 45 of the 1999 Constitution derogating from the freedom of any person to join or form any union of his choice. This Decree also known as Trade Union (Amendment) Decree 1978 re-structured and organized trade unions along industrial lines such that workers no longer belonged to unions of their choice but on the basis of the predominant end product of the organizations with which they work.

3.3 National Assembly /Military Administration Sources

The stream of legislations relating to labor in the form of statutes traces their origin from this source. Civilian Administrations in Nigeria enact them in form of Acts while Military Administrations promulgate them in form of Decrees. Labor Laws sourced from this area is only second to the constitution.

3.4 International Labor Organization Conventions (Ilo)

Some provisions of the labor laws of Nigeria also derive their content from the International Labor Organization (ILO) Conventions which are recommendations and ratifications from member countries. Convention 87 of the ILO for example has bearing on Section 40 of the 1999 Constitution as it relates to freedom to belong to any union of one's choice.

3.5 Subordinate Legislation

Certain statutes confer powers on the Executive to make regulations (subordinate legislation) which govern labor-management relations in Nigeria. Decree No. 23 of 1976 (now an Act) (Trade Disputes (Essential services) Decree), for example, empowers the Head of State to make an order published in the Gazette to proscribe an erring trade union. The Labor Decree, 1974 is a good example of another statute empowering the Labor Minister in some of its provisions to make regulations which govern labor relations. These legislations (subordinate or otherwise) prevail over the common law unless where permitted by a statutory provision (Uvieghara, 1986). Generally, Nigerian labor statutes are in Pari Materia with those of the United Kingdom.

3.6 Judicial Sources

Labor Laws from this source consist of the decisions and interpretations of law courts, as they pertain to labor matters. The

common law precedent doctrine applies in labor complaints within the Nigerian court systems, as it applies in the United Kingdom.

The contract of employment at common law, for example, is made up of court decisions, over the years which defined the duties and obligations of employers and employees at work.

An employee, at common law, owes an employer the following duties:

- Duty of obedience
- Duty of faithful service or fidelity
- Duty to be free from misconduct
- Duty to use skill and care or indemnity

An employer, at common law, also owes an employee the following duties:

- Duty to provide work
- Duty to indemnify employees against liabilities and losses in the course of work
- Duty to provide testimonial or reference to departing employees
- Duty to provide boarding and lodging to employees
- Duty to provide care (provide efficient co-employees; proper appliances; and combine all in a safe system of work).

3.7 Collective Agreements and Fair Wages Clause

Collective agreements and fair wages clause form another source of laborlaws in Nigeria.

Statutorily, collective agreements are any agreement in writing relating to terms of employment and physical conditions of work concluded between an employer, a group of employers or one or more organizations representative of employers, on the one hand, and one or more organizations representative of workers, or the lawfully appointed representatives of anybody of workers, on the other hand. Collective agreements are therefore conditions reached, out of collective bargaining between the principal actors (labor and management) which set terms and conditions of employment; providing means of making rules; and procedure for settling disputes in industry. Before the promulgation of the new National Industrial Court Act, Collective agreements in Nigeria were not legally enforceable contracts between labor and management that reached the agreement. At that time, there were some ways in which the terms of a collective agreement may become binding. The Labor Minister may exercise the powers conferred on him by the Trade disputes Decree 1976, by making an order which will make the terms of any collective agreement binding. Another way by which the terms of a collective agreement may be made binding is by expressly providing in the agreement that it should have that effect. A collective agreement could also be binding, when an employer and an employee agree in the latter's contract of employment, that it (the contract of employment) is subject to an existing collective agreement. It is now settled law that Collective Agreements are enforced by the National Industrial Court. It has to be noted that a recent Nigerian Supreme Court ruling has made rulings of the National Industrial Court subject to appeal to the Court of Appeal and the Supreme Court. It is therefore uncertain if the status of the enforceability of Collective Agreements will be reversed by these higher

Courts.

Labor laws sourced from the fair wages' clause regulate contractors with government departments. Uvieghara takes government departments, for this purpose, to mean any authority which will receive any assistance from government by way of grant, loan, subsidy, license, guarantee, or other form of assistance in entering into a contract with any contractor.

Section A of the Fair Wages Clause provides that:

"The contractor shall pay rates of wages and observe hours and conditions of labor not less favorable than those established in the trade or industry in the district where the work is carried out, by agreement, machinery of negotiation or arbitration to which the parties are organizations of employers and trade unions respectively of substantial proportions of the employers and workers engaged in the trade or industry in the district (hereinafter referred to as "established rates and conditions") or failing such established rates and conditions in the trade or industry in the district, established rates and conditions in other districts where the trade or industry is carried on under similar general circumstances".

Section B provides that:

"In the absence of any established rates and conditions, as defined in section A, the Federal Ministry of Employment, Labor and Productivity shall after consultation with representatives of employers and workers prepare and furnish a schedule setting forth fair and reasonable rates and conditions to be observed in the execution of the condition of the contract, having regard to established rates and conditions in respect of persons employed in a capacity and in general circumstances similar to those of the persons engaged on the contract, or failing such established rates and conditions, any fair standards of rates and conditions commonly recognized in respect of persons employed in a similar capacity and in similar general circumstances".

And Section K states that:

"In the event of default being made in payment of any money in respect of wages of any workman employed on the contract and if a claim thereafter is filed in the office of the Federal Ministry of Employment, labor and Productivity, and proof whereof satisfactory to the Ministry is furnished, the Ministry shall forthwith notify the contracting Department and may, failing payment by the contractor, arrange for the payment of such claim out of the monies at any time payable under the said contract and the amount so paid shall be deemed payments to the contractor".

And contractor or sub-contractor who is found to be in breach of this order, section L provides, shall cease to be approved as a contractor or sub-contractor for such period as the Labor Minister may determine. The application of fair wages clause has no current potency in Nigeria.

3.8 Work Rules and Long-Standing Practice

Work rules unilaterally imposed by an employer (in form of handbooks) containing instructions to the employee as to the way he is to do his work is handed over to employees at the time of entering the employment or after he has commenced work. Though work rules do not form part of the contract of employment, it is within the employers Common Law power to issue instructions, from time to time and every employee is bound to accept such instructions provided it is properly and lawfully given.

The duty of the employee to obey the proper and lawful orders of his employer is imposed by common law. Long standing

practice also forms part of the labor laws of Nigeria. "It is well established that for a long-standing practice to become part of a contract of employment, it must be notorious or very well known, reasonable and certain" and it must not be contrary to law or to an express term of the contract. The fact that most establishments in Nigeria do eight hours work per day and pay as overtime, any work done in excess of eight hours is a long-standing tradition or practice. This practice has come to stay even though the Statutory Provisions (Decree 21, 1974) regulating Hours of work did not specify what constitutes the normal hours of work except those fixed by mutual agreement (collective bargaining and industrial wages board). Figure 2 is a representation of the sources of the Nigerian labor and social laws:

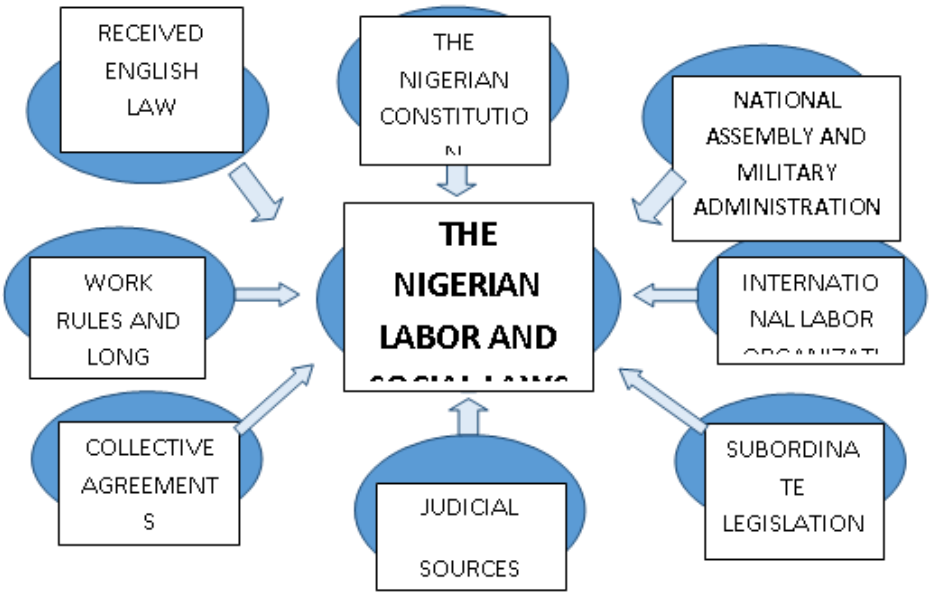

Figure 2: Sources of Nigerian Labor and Social Laws

Source: *Desktop Analysis, 2016*

4. THE NIGERIAN PRINCIPAL LABOUR ACTS

These are the gamut of statutes which prescribe minimum conditions regulating the dyadic relational aspect of industrial enterprises and indeed industrial relations as it pertains to terms of employment and physical conditions of work; the formation and organization of Trade Unions; industrial jurisprudence and grievance procedure. Basically, they are the Labor Act and its amendments; the Trade Unions Act and its amendments; and the Trade disputes Act with its amendments. There are however other laws or statutes having pressure to bear on labor matters - such as the National minimum wage Act, Wages Board and Industrial Councils Decree, Employers Housing Scheme (Special provisions) Act (and the National Housing Fund Act) and the Factories Act. The Industrial Training Fund Act and the national providence Fund Act (now the Nigeria Social Insurance Trust Fund Act) also have bearing on labor matters in Nigeria.

The Labor Act with its amendments is divided into four parts. Part I deals with the protection of Wages, contracts of employment and terms and conditions of employment. Part II regulates Recruiters and recruiting generally. Part III deals with special classes of workers such as Apprentices, Employment of Women, Young persons and Domestic servants. It also deals with employment exchanges. Part IV regulates the keeping of records of wages and statistics of the number of persons employed by employers. This part which confers power on labor officers to enforce the provisions of this Act also empowers common law courts to entertain individual labor complaints. The labor Act does not cover all employees but only those defined as workers by the Act".

The Trade Union Act is another example of statutes of the National Assembly or Military law in Nigeria which prescribed minimum conditions that regulate the formation and administration of Trade Unions. This Act makes provisions with respect to the formation, registration, and organization of Trade Unions, federation of Trade Unions, and central labor organizations. Part one deals with the registration of Trade combinations as Trade Unions.

SALIENT SECTIONS IN PART ONE

Section 1: Meaning of Trade Union- "Any combination of workers or employers whether temporary or permanent, the purpose of which is to regulate the terms and conditions of employment of workers……"

Section 3(1): Application for registration to be signed by:

In the case of trade unions of workers, at least fifty members of the union.

In the case of trade union of employers, at least two members of the union.

Section 3(3): "No staff recognized as a projection of Management within the management structure of any Organization shall be a member of or hold office in a Trade union……."

This is determined by factors such as employee's status, authority, powers, duties and accountability which are reflected in his conditions of service.

Section 11: "Members of the armed Forces listed here, are prohibited from forming or joining trade union:

- Nigeria Army, Navy or Air Force
- Nigeria Police Force
- Custom and Excise Department, Immigration Department, Prison Services
- Custom Preventive Service
- Nigeria Security Printing and Minting Company
- Central bank of Nigeria
- Nigeria External Telecommunications Limited
- Every Federal or State Government Establishment the employees of which are authorized to bear arms.
- Such other Establishments as the Minister may from time to time by order specify.

Section 24: Recognition of Trade Unions is obligatory" Where there is a trade union of which persons in the employment of an employer are members, that trade union shall, without further assurance, on registration... be entitled to recognition by the employer"

Part II provides for Federation of Trade Unions.

Salient Sections in Part Two

Section 29(2): "A Federation of trade union shall not come into existence until it is registered" (TUC).

Section 32: "No person to hold office in more than one Federation of trade unions at the same time.

Part III deals with the formation, powers and admission of further bodies into central labor organization.

This part has been amended by the Trade Unions Amendment Act 2005.

Part IV deals with the Accounts and Returns of registered Trade Unions.

Part V deals with miscellaneous issues such as penalties for offences against the Act, peaceful picketing, non-application of the companies and Allied matters Act to Trade Unions etc.

Third Schedule of the Act:

The list of registered and recognized trade unions is contained in the third schedule of the Act:

Part "A" of the third schedule has 41 workers unions (excluding the Customs and excise and Immigration Staff Union.

Part "B" of the third schedule has 25 Senior Staff unions and 10 Employers unions.

Protection of Union Members and Officials From Tort

Section 23: Courts are prohibited from entertaining actions in tort, brought against Union members provided it is done in contemplation or furtherance of a trade dispute.

Protection of Unions against Criminal Conspiracy

Section 42 frees Unions, their Officials and Members from criminal conspiracy if they peacefully picket, that is, if they attend at or near a house or place where a person resides or works or carries on Business merely for the purpose of peacefully obtaining or communicating information or peacefully persuading any person to work or to abstain from working.

Protection of Unions against Tort Actions

Section 43 makes certain acts not actionable in Tort if in contemplation or furtherance of a Trade Dispute. That is to say, if the acts of a person who is a member of a Trade Union induces some other persons to break a contract of employment; interferes with the trade, Business or employment of some other person or with the right of some other person to dispose of his capital or his labor as he wishes; threatens to break a contract of employment to which the Union is a party or not; threaten to induce some other person to break a contract of employment to which that other person is a party. It must be seriously noted that section 43(2) states clearly that acts of Unions, their Official and members shall be actionable in court if they do anything outside what is stated therein in sections 23, 42 and 43.

Highlights of the Trade Unions Amendment Act 2005

- Replacement of central labor organization with Federation of Trade unions.
- Membership of a Trade Union is now increasingly voluntary.
- Criminalization of strike action unless the following conditions have been met:
  - Essential services staff are not to be involved
  - Trade dispute must be a right dispute
  - Dispute must arise from a collective and fundamental breach of employment contract or collective Agreement.

- Provision for Arbitration in the Trade Disputes Act must be first complied with.
- A ballot must be conducted for members of the Trade Union and a simple majority of registered members' votes to go on strike.
- Non-restriction or constraint of people's personal freedom in the course of picketing.
- No compelling of non-Union members to join a strike. No obstruction of public highways during strikes.

The Trade Disputes Act has a six-part division. Part I prescribes the procedure for dispute settlement. Part II provides for the establishment, constitution and jurisdiction of the National Industrial court. Part III deals with the constitution of Boards of inquiry while Part IV empowers the Industrial Arbitration panel (IAP), National Industrial Court (NIC) and Board of inquiry to request information from anybody whose case is referred to it. This part also empowers the Chief Justice and the Labor Minister to make regulations governing the NIC and IAP respectively. Part V is obsolete as it was relevant when labor matters were in the concurrent list of the pre-1979 and 1999 Constitutions. Sections 31 and 32 of Part VI have been suspended by Decree 23 of 1976. These sections required workers to give fifteen days' notice before ceasing work. The Trade disputes (Essential Services) Act and its amendment empowers the Head of State to proscribe erring unions and prescribes penalties for offences respectively. Like the Trade Unions Act, all employees are covered by the Trade disputes Act. The words "Trade Unions" cover workers unions, Senior Staff Associations and Employers' Associations.

The National Minimum Wage Act 1981 and its amendment Decree of 1990 prescribed a National Minimum Wage for workers. It can also cover other matters connected therewith. This has been abrogated and replaced with the National Minimum Wage Act of 2000.

The Wages Board and Industrial Councils Decree 1973 empowers the Labor Minister to establish industrial wages boards if he is of the opinion that wages are unreasonably low or that no adequate machinery exists for the effective regulation of wages or other conditions of employment of workers. It is suggested that this Decree has been overtaken by the National Minimum Wage Act, 2000 and now the National Wages and Salaries Commission.

The Employers Housing Scheme (Special Provisions) Act makes it obligatory for designated employers (whether corporate or un-incorporate) not later than six months after the requisite order is made, submit for the consideration of the labor minister, proposals for the establishment of housing scheme for their employers. It is also suggested here that the National Housing Fund Act is a more practical alternative to this.

The main statutes that regulate occupational safety and health at the workplace are the Factories Act (CAP 126), Laws of the Federal Republic of Nigeria, 1990 and the Employees' Compensation Act 2004.

The Factories Act

The Factories Act provided for the following:

Registration of Factories and protection of factory workers and a wider spectrum of workers and other professionals exposed to occupational hazards.

Other provisions of the Act bother on the duty of employers on the following:

- Health of workers at the workplace through cleanliness of the environment; discouraging overcrowding;

encouraging good ventilation, lighting, drainage of floors and sanitary convenience.

- Safety of workers at the workplace through secure fencing of likely flywheel connected to prime movers, transmission machinery, vessels containing dangerous liquid, and the use of quality materials and bolts on the construction of protective fences, equipment, steam boilers and air receivers.
- Welfare of workers at the workplace through the provision of good drinking water, washing facility, accommodation for clothing and first Aid.

At the Factories Act, and like the common law, an employee is entitled to claim damages only where he is able to prove fault on the employer.

The Employees Compensation Act repeals the Workmen's Compensation Act 2004 and makes comprehensive provisions for the payment of compensation to employees who suffer from occupational diseases or sustain injuries arising from accident at workplace or in the course of employment. The basic idea of the Employees' Compensation Act was to remove the fault proving principle inherent in the other laws. The employee only needs to report the injury to the employer within 7 days of its occurrence and the employer needs to report the injury to the NSITF Board 7 days of its occurrence. Its provisions apply to employers and employees in both the Public and Private Sectors of the economy, irrespective of the number of employees an employer may have. The following are the recognized 3 types of incapacity under the Act:

Temporary Incapacity: This can be

Total: where the incapacity does not allow the workman to work for a temporary period.

Partial: where the incapacity partially allows him to work for a temporary period.

Permanent Incapacity: This can be

Total: where the injury does not allow the workman to work at all.

Partial: where the injury allows him to work after some time but not fully.

Fatal or Death: where the workman died and leaves behind, dependents' wholly or partially dependent on him.

The Scheme offers cash and non-cash benefits:

Cash Benefits

- Compensation for injuries occurring in the normal workplace:
  - Compensation for mental stress;
  - Compensation for occupational disease;
  - Compensation for hearing impairment;
  - Compensation for injuries occurring outside the normal workplace;
  - In fatal cases (death) as much as 90% of the total remuneration of the deceased employee is paid to the dependents of the deceased (widow/widower/children etc.); until the occurrence of certain events specified by the Act.

Non-Cash Benefits

- Provision of artificial appliances including artificial limbs where necessary;
- Vocational, rehabilitation and counseling services to injured employee with a view to bringing the employee back to work;
- The scale of compensation has been actuarially determined for claims on permanent disability, temporary disability and death.

Noted Improvements in the Employees' Compensation Act

Wider Definition of Who an Employee is: a person employed on a continuous, part-time, temporary, apprenticeship or casual basis; domestic servants, not being family members of the employer; persons employed in the federal, state, local governments as well as any of the government agencies; and persons employed in the formal and informal sectors of the economy.

Expansion on the place of injury occurrence: injury arising out or in the course of employment whether or not the employee got injured in the workplace.

Expansion on item on injury: awarded for mental stress, occupational disease, hearing impairment, and injuries occurring outside the normal workplace.

Compensation payment

- Death or fatality- 90% of the total remuneration of the deceased employee is paid to the dependents of the deceased.
- Permanent Total Incapacity - the board shall pay monthly to the employee, compensation that is a periodic payment equal 90% of the remuneration of the employee.
- Permanent Partial Incapacity - the board shall pay monthly to the employee, Compensation that is a periodic payment equal to 90% of an estimate of the loss of remuneration resulting from the permanent-partial disability.
- Compensation for both permanent and temporary disabilities - payable to an employee falling below the age of 55 years at the time of injury until such employee attains the age of 55 years or until the date such employee retires, such retirement date being determinable by the board.

Where an employee is above the age of 55 years at the date of the injury, compensation is payable to him until the expiration of 2 years after the date of injury or such retirement date as may be determined by the board.

The Industrial Training Fund Act provides for the promotion and encouragement of the acquisition of skills in industry and commerce with a view to generating a pool of indigenous-trained-middle level manpower having 25 or more persons in their establishment to contribute 3% of their annual payroll or one-half percent of its annual turnover, whichever is greater.

The national' Providence Fund Act, 1961 and its various amendments provide for a compulsory savings scheme to which both the worker and his employer contribute in equal proportion for the benefit of the worker. Its regulation provides for the payment of Four Naira (N4.00) each by the worker and his employer to the Fund. The Scheme provides for cash payment to a member when his employment ceases due to Old Age or invalidity. In the case of the death of a

member, his balance in the Fund is paid to his dependents or next-of-kin. Cash payment is also made to a member during long period of loss of employment or permanent emigration from Nigeria.

The National Providence Fund Act has been repealed. It has been replaced by the Nigeria Social Insurance Trust Fund Act and now by the Employees' Compensation Act. This Act provides for employers to contribute 1% of their payroll to the Board of the Nigeria Social Insurance Trust Fund.

5. FINDINGS ON THE EXTENT OF EFFECTIVENESS OF THE LABOR AND SOCIAL LAWS

- There is increasing level of authoritarianism on both the side of managements and Unions – Denial of Rights
- Dis-obedience to the provisions of the labour laws by parties has led to acrimonious relationships and disputes leading to preponderance of strikes
- The LabourLaws have been perceived as unfair by parties, including perception of poor wages by workers.
- There has been increasing cases of disrespect for Collective Agreements by the parties –weak tripartism. The case of the Academic Staff Union of Universities and Government is a good example.
- There is an observed weak role of Government (Federal Ministry of Labour) in enforcing the laws and regulations.
- Some labour law provisions are obsolete and penalties too weak to deter offenders.
- The laws are ill adapted to the significant gap between the heterogeneous formal and informal economies, thus unable to capture the complexities of today's work realities.
- Issues related to vulnerable groups who are prone to exploitation enjoy limited coverage.
- Parties to industrial relations spend much time and effort reacting to each other but rarely spend time trying to develop effective approaches to achieve the goals of the Organisation.
- The proliferation and poaching of Unions members due to the improper delineation of industrial sectors for the purpose of the re-structured unions.
- Incursion of Unions into their areas that are outside of their terms of employment and conditions of work makes the enforcement of the laws challenging.
- Prevalence of strike actions outside rules of engagement.
- Parties seeing themselves as adversaries rather than partners.

6. THE WAY FORWARD

- Return to innocence of obeying the laws – curb impunity in industrial relations especially by powerful unions.
- Getting the laws to keep abreast of changing business environment.
- Industrial relations strive in atmosphere of good business performance. Government to play the role of getting the economy to work.
- Public Sector to adopt true collective bargaining.

- Principals of parties to set standards through codes of ethics and codes of practice. Live by that conduct!
- Maintain disciplinary and grievance procedures so that outliers can be held accountable for their actions.
- Name and shame unethical Unionists.
- Encourage whistle blowing and develop complaints mechanism so that public's grievances can be heard, and appropriate reparation made.

7. CONCLUSIONS

In this paper, we traced the evolution of Industrial Relations as a discipline to the contentions put forward by those who challenged the theories of the orthodox, classical and neo-classical economists. These traditional economists applied a commodity free and perfect market model to the relationship or transaction between the demand and supply of labor.

The paper added that the labor market is not co-terminus with the commodity market and therefore with imperfection. There was the emphasis for the deployment of institutions of regulation as an intervention mechanism for the regulation and governance of the labor market. This gave birth to the discipline known as Industrial Relations today.

In this paper, we discussed that the nature of Industrial Relations is multi-disciplinary and hence the difficulty in arriving at a definition of its subject-matter. However, an agreement that, not all social relations at the workplace fall within the domain of Industrial Relations (though these social relations may influence the action of the actors in the system), it is reached by Industrial Relations experts.

The paper noted that the evolution of this legal framework is seen to be tortuous because its emergence led to the following traumatic events in the practice of Industrial Relations in Nigeria:

- Proliferation of pocket-sized unions
- The characterization of Trade Unions and central labor organization with divisiveness and instability
- The tortuous labor codes assigned little or no role to workers on labor matters
- The Labor codes of the era gave employers the effrontery to decide not to recognize or relate with Trade Unions.

From our analysis of the legal framework for Industrial Relations practice, it is conclusive to state that the Nigerian labor statutes prescribe minimum guiding principles. And that certain areas that are not covered by statutes are remediable at common law and vice versa. Certain unexpressed terms, for instance, at the contract of employment are implied at common law; and deficiencies at common law are redeemable with statutory options.

We may conclude our argument here with an inference that changes in Industrial Relations practice in Nigeria is partly a function of the impact of the legal framework (labor laws) that emerged in a particular historical period of the country. The effect of the legal framework had led in many cases to a resultant behavioral response of the key actors in the practice of Industrial Relations. This proposition here does not however undermine the nature and nurture of the principal characters.

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